SOCIETY OF CORPORATE SECRETARIES
& GOVERNANCE PROFESSIONALS

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September 24, 2007

Securities and Exchange Commission
100 F St., N.E.
Washington, D.C. 20549
Attention: Nancy M. Morris, Secretary

VIA E-MAIL (rule-comments@sec.gov)

**Re:** **(1) File No. S7-15-07; Release Nos. 33-8819; 34-56013; 39-2447 – Smaller Reporting Company Regulatory Relief and Simplification;**

**(2) File No. S-7-10-07; Release No. 33-8812 – Revisions to the Eligibility Requirements for Primary Securities Offerings on Forms S-3 and F-3**

Ladies and Gentlemen:

The Society of Corporate Secretaries & Governance Professionals is a professional association, founded in 1946, with over 4,000 members who serve approximately 3,000 companies. Responsibilities of our members include supporting the work of corporate boards of directors, their committees and executive management regarding corporate governance and disclosure. Our members assure issuer compliance with the securities laws and regulations, corporate law, stock exchange listing requirements and the accounting rules, and have been on the front-line in implementing the structural changes necessitated by the Sarbanes-Oxley Act of 2002 and the related rules of the Securities and Exchange Commission, the Public Company Accounting Oversight Board and the exchanges. This comment letter is based on the experience of our members who are implementing the securities laws at public companies, small and large, on a daily basis.

We support generally the proposed rule changes contained in the subject Releases but believe they do not go far enough to mitigate the regulatory burden which falls disproportionately on smaller public companies. Our comments fall into two general categories:

- Recommendations to expand the scope of the proposed changes to more fully reflect the recommendations of the Commission's Advisory Committee on Smaller Public Companies.
- Comments on the specific provisions contained in the Releases.

**Expanding the Scope of the Rule Changes as Recommended by the Advisory Committee**

The Advisory Committee's Final Report of April 23, 2006 recommended three critical changes to the Commission's rules which are not reflected in these Releases or the parallel releases approved by the Commission at its May 23, 2007 meeting.

1. In Part I of the Report, the Advisory Committee recommended a new methodology for determining which companies should be considered "microcap" and "smallcap" and thus appropriate for scaled regulation by the Commission. This methodology, based on thresholds of 1% and 6% of total market capitalization, offered the opportunity for the Commission to solve a long-standing, persistent problem with its regulatory system—the inability to continuously correct for the impact of inflation and market changes. As anyone who has practiced for any length of time in the securities laws knows, the Commission's rules are replete with set dollar amounts which have become obsolete. "Small companies" become "big companies" even though their underlying fundamentals are unchanged. Release No. 33-8819 attempts to address this phenomenon by including an inflation adjustment formula based on a Department of Commerce index. Whether this index will in fact result in a stable universe of "smaller reporting companies" will only be known when the adjustment date arrives in five years. If the percentage of these companies shifts significantly either way, it strongly suggests that the formula will have failed.

   By contrast, Commission adoption of the Advisory Committee's percentage-of-total-market-capitalization standard would establish thresholds which provide assurance that the universe of companies eligible for scaled regulation remains constant over time as a fraction of the total market—an approach which more correctly reflects the view of these companies in the market.

   Clearly, adopting the percentage-of-total-market-capitalization system would implicate changes to other areas of the Commission's rules and would require additional rule-making. Release No.33-8819 opts against this system, essentially on the grounds that it would be such a major change that it would be complex to implement. While this might well be a significant project for the Commission's staff, the changes would be largely technical in nature and unlikely to present the Commission with difficult or controversial policy questions. The end product would be an inherently superior regulatory system which would largely end the never-ending debates over set dollar levels which inevitably become obsolete.

2. Release No.33-8819 also rejects the use of market capitalization as the test of "small" vs. "large" and continues to use public float as the test, relying on (i)

the fact that many other commission rules use a public float standard, and (ii) the apparent substantial overlap between companies covered by the $75 million public float test and the 1% of market capitalization "microcap" standard—roughly $128 million—proposed by the Advisory Committee. While the public float test has the appearance of being a more precise measuring stick because it excludes the equity held by affiliates, in fact it is a less reliable comparison point because it assumes that all companies are making equivalent judgments as to who is an affiliate. In fact, there is substantial variation among companies. Thus, market capitalization, a number far less prone to subjective judgmental differences—and more difficult to manipulate by those seeking to avoid the full effect of the securities laws—is a much more reliable standard. Again, adopting this standard is a more difficult task for the Commission's staff, but worth doing over the long run.

Moreover, investors would be better served by the use of market capitalization as the standard for "small" vs. "large." A Company's size, as established by the market, is based on the evaluation of the business, regardless of who owns the shares. By excluding affiliate-held shares, the Commission's rules distort the disclosure standards based on an accident of the moment as to how many shares are still held by, say, venture capitalists and founder-executives. Over time, these shares might be sold into the market and the company would move from "small" to "large" even though the business was unchanged. The level of disclosure companies are obligated to provide and investors are entitled to receive should vary based on the company's size and not on where it is at a point in time in the evolution of its shareholder base.

Correspondingly, use of public float rather than market capitalization produces an anomalous result in the expansion of eligibility for Forms S-3 and F-3. Here also, the amount of disclosure the public receives turns on the quirks of the company's ownership at the time the offering is registered (as well as the company's subjective judgment as to who is an affiliate). We believe the disclosure burden on the company and the level of information provided by the company to potential investors should be based on the company's actual size as measured by market capitalization. Use of public float means that two otherwise identical companies would be providing investors differing disclosure based on who happens to own the shares at the time.

While the Commission believes that there is currently substantial overlap between a $75 million public float test and a $128 million market capitalization test, there can be no assurance that this congruence will remain intact going forward.

3. Another major recommendation of the Advisory Committee was the division of smaller public companies into two categories: "microcap"—the bottom 1% of total market capitalization—and "smallcap"—those companies in the